vss

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 1234 OF 2002

Sanjay Madhukar Kharade ... Appellant

V/s.

The State of Maharashtra ... Respondent

Miss Latika Neverekar, Advocate appointed for the appellant.

Mr. P.S. Hingorani, A.P.P. for the respondent.

CORAM: V.G. PALSHIKAR &
SMT.NISHITA MHATRE, JJ.

DATED: OCTOBER 18, 2006

ORAL JUDGMENT (PER PALSHIKAR, J.):

. Being aggrieved by the order dated 2.5.2002 passed in the Sessions Case No. 156 of 2000 by the Additional Sessions Judge, Solapur, the appellant has preferred this appeal on the grounds mentioned in the memo of appeal as also canvassed before us by both parties.

2. With the assistance of the learned advocate for the appellant and the learned Public Prosecutor, we have scrutinized the record and reappreciated the evidence on record.

3. The prosecution case as found on reappreciation, stated briefly, is that -

. There was a quarrel between the accused and the victim on 6.7.2000 and a as a result of the quarrel, the victim went on to the terrace and threw a tile therefrom intending to hit the accused but the tile hit the mother of the accused which enraged the accused. He took the scissor lying in the shop of the victim and went on upstair and stabbed him. After investigation, the accused was prosecuted under Section 302 of the Indian Penal Code. The prosecution examined seven witnesses to prove its case. The learned trial Judge, on appreciation of the evidence on record, came to the conclusion and proceeded to convict the accused under Section 302 of the Indian Penal Code to suffer imprisonment for life.

4. All the seven witnesses came to be examined. PW-2 Laxmi Ramgir is the mother of the victim who is eye-witness and PW-3 Ramesh is the other eye-witness. Both of them were present when the assault took place. PW-5 Sitaram Jamdar, though not eye-witness to the actual stabbing, came on the scene of offence immediately thereafter and saw the accused going up-stair with scissor in his hand. When he went inside the terrace, he saw the victim lying injured and, therefore, he informed the police.

5. From the above evidence, it is clear that the

quarrel took place on that day itself and the quarrel

was started because of the victim. The scrutiny of the eye-witness account of PW-2 and PW-3 will show that they were naturally present at the scene of offence and have deposed completely as to the incident. There is a ring of truth to their testimony as they specifically say that the quarrel was started by Narendra - the victim. From the total evidence, it is obvious that the death of victim was caused because of sudden quarrel and grave provocation given by the deceased to the accused by throwing the tile on the head of the accused’s mother.

6. The learned trial Judge has given adequate reasons for accepting the evidence of the eye-witnesses and has rightly came to the conclusion of the guilt. In our opinion, there is nothing on record which would warrant any other view. We agree with the findings of the learned trial Judge that the accused was responsible for homicidal death of the victim. The only question which requires consideration in the circumstances exactly is the offence committed by the accused.

7. The testimony of the witnesses apart from proving assault, also proved that there was provocation and there was sudden quarrel. In the circumstances, it cannot be said that the accused intended to murder the

victim. He was enraged by the injury caused to his mother and, therefore, rushed to hit the victim with whatever possible weapon which could come in his hand. He lifted the scissor and stabbed the victim. Looking to the injuries inflicted by the accused, it can safely be said that the accused reasonably knew that such injuries on vital part can prove fatal. The fact that the stabbing has taken place, therefore, proves that the accused committed the offence of culpable homicide not amounting to murder because the basic intent to kill the victim is absent in the present case.

8. In our opinion, the proper provision to convict the accused would be under Section 304 Part I of the Indian Penal Code. Therefore, we hereby set aside the conviction of the accused under Section 302 and instead convict the accused under Section 304 Part I of the Indian Penal Code to suffer rigorous imprisonment for a period of 10 years.

9. Appeal accordingly partly allowed and disposed of.